

Maine Law Review

Volume 62
Number 2 *Symposium – Accessing Justice in
Hard Times:
Lessons from the Field, Looking to the Future*

Article 17

June 2010

Findings of Fact vs. Conclusions of Law: How the Law Court Complicated the Case of State v. Connor

Christopher S. Boulos
University of Maine School of Law

Follow this and additional works at: <https://digitalcommons.mainerlaw.maine.edu/mlr>

 Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), and the [Evidence Commons](#)

Recommended Citation

Christopher S. Boulos, *Findings of Fact vs. Conclusions of Law: How the Law Court Complicated the Case of State v. Connor*, 62 Me. L. Rev. 689 (2010).

Available at: <https://digitalcommons.mainerlaw.maine.edu/mlr/vol62/iss2/17>

This Case Note is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Maine Law Review by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact mdecrow@maine.edu.

FINDINGS OF FACT VS. CONCLUSIONS OF LAW: HOW THE LAW COURT COMPLICATED THE CASE OF *STATE V. CONNOR*

Christopher S. Boulos

- I. INTRODUCTION
- II. THE *CONNOR* CASE
 - A. *Factual Background*
 - B. *The Law Court Opinions*
 - C. *Where the Court Went Wrong: Findings of Fact vs. Conclusions of Law*
- III. THE *CONNOR* HYPOTHESIS
- IV. THE “INFERENTIAL” STANDARD AND ITS EFFECT ON TRIAL JUDGES, THE LAW COURT, AND DEFENDANTS
 - A. *Trial Judges*
 - B. *The Law Court*
 - C. *Defendants*
- V. HOW THE COURT SHOULD ADDRESS A REAL AMBIGUITY IN THE FINDINGS OF FACT
 - A. *Step One: Turn Away Appeals with Inadequate Records*
 - B. *Provide a “Good-Faith” Exception and Allow for Remand if the Record Is Inadequate or Ambiguous*
- VI. CONCLUSION

FINDINGS OF FACT VS. CONCLUSIONS OF LAW: HOW THE LAW COURT COMPLICATED THE CASE OF *STATE V. CONNOR*

Christopher S. Boulos*

I. INTRODUCTION

In *State v. Connor*,¹ the Maine Supreme Judicial Court, sitting as the Law Court, upheld a trial judge's² denial of a motion to suppress evidence.³ Although the evidence presented in the suppression hearing seemed adequate to support the denial of the motion, the trial judge failed to clearly state his conclusions of law when denying the motion. However, the Law Court mistook the ambiguous conclusions of law as ambiguous findings of fact. Because the findings of fact were ambiguous in the court's view, the majority and dissenting opinions⁴ spent the bulk of their energies discussing how the court should review a case when the findings of fact are ambiguous. However, as this Note will discuss, the Law Court essentially turned a straightforward case into a convoluted one by delving into the findings of fact "issue" in such detail.

In essence, the findings of fact issue should not have been addressed at all. The Law Court simply mistreated an ambiguity in the trial judge's legal conclusion as an ambiguity in its factual conclusion. Since the court reviews legal conclusions *de novo*,⁵ an ambiguous legal conclusion by a trial judge should not matter since the court will revisit the issue in full on appeal. Accordingly, the court should have simply undertaken a *de novo* review of the law applied to the facts in the case. However, because it mistook a legal conclusion for a factual one, the court spent considerable time discussing how to review a case when a historical fact is not clear from the findings of fact—a situation this Note will call the "Hypo."⁶ Along with examining the facts and opinions of the *Connor* case, and explaining how the court should have dealt with the case, this Note will also address the Hypo, and how the court should address an ambiguity in the findings of fact.

* J.D. Candidate, 2011, University of Maine School of Law; B.A., 2007, Columbia University. I would like to thank Professor Melvyn Zarr for all of his insight and help on this Note. I would also like to thank my family for the tremendous amount of support they have given me throughout law school and life—without them, this would not have been possible. Finally, thank you to the editors and staff of the *Maine Law Review* for your excellent editing and hard work.

1. 2009 ME 91, 977 A.2d 1003.

2. The trial judge was Judge Kevin M. Cuddy, sitting in Hancock County.

3. *Connor*, 2009 ME 91, ¶ 12, 977 A.2d at 1006.

4. *Connor* was decided by a 3-2 majority. Justice Alexander wrote for the majority, including Chief Justice Saufley and Justice Mead. Justice Clifford filed a dissenting opinion in which Justice Levy joined.

5. "Accordingly, a motion court's findings of historical fact will be overturned only when clearly erroneous; however, the legal conclusions drawn from the historical facts are subject to an independent examination by this court." *State v. Sylvain*, 2003 ME 5, ¶ 10, 814 A.2d 984, 987 (citations omitted).

6. "The Hypo" refers to the hypothetical situation where a fact in the findings is actually in dispute. Although the court treats *Connor* as this type of case, it is not. In *Connor*, the historical facts of the case are largely undisputed—it is only the judge's legal conclusion that is unclear.

II. THE CONNOR CASE

A. *Factual Background*

Connor's appeal stemmed from a motion to suppress evidence⁷ obtained by the Hancock County Sheriff's Department during an investigation of an underage drinking party in Penobscot on October 29, 2007.⁸ The Sheriff's Department⁹ had decided to patrol an area that had a reputation for loud parties where underage drinking often occurred.¹⁰ While on their detail, the deputies came across "what appeared to be a good-size party" based on "the music, [the] people outside, and that sort."¹¹

The deputies parked in a location so that the party-goers could not see them and then walked towards the suspected party building in a sort of "roundabout" fashion.¹² As the deputies were walking, they observed a pick-up truck backing down the road for ten to fifteen yards and subsequently into a ditch.¹³ The truck attempted to move forward, spun its tires, was able to return to the road, and then paused.¹⁴ At that point, a deputy approached the driver's side door and produced his law enforcement identification to the defendant in the case—Sean T. Connor—and presumably proceeded to treat Connor like any other traffic stop suspect.¹⁵

Connor was subsequently charged with operating under the influence.¹⁶

7. Evidence suppression in Maine criminal cases is mandated from the 1961 landmark United States Supreme Court case of *Mapp v. Ohio*, 367 U.S. 643 (1961). When reviewing a trial court's findings of fact from a suppression hearing, the Law Court has always used the clear error standard—that is, a suppression order will only be overturned if there is no competent evidence in the record to support the trial judge's findings of fact. See, e.g., *State v. MacKenzie*, 161 Me. 123, 134, 210 A.2d 24, 31 (1965) ("A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.").

8. Transcript of Record at 11, *State v. Connor*, 2009 ME 91, 977 A.2d 1003 (No. HAN-08-524). It is unclear from the record when Connor was actually stopped. The sheriff's deputy testified that he was working the night of October 29; however, the summons was issued on October 30. *Id.* at 1, 11.

9. The sheriff's deputy testifying at the suppression hearing could not remember the exact number of deputies involved, but "believe[d] it was three or four, roughly." *Id.* at 12.

10. *Id.* at 11-12.

11. *Id.* at 12.

12. *Id.* at 13.

13. Transcript of Record, *supra* note 8, at 15.

14. *Id.*

15. *Id.* at 26. The record is unclear on how the stop proceeded after the deputy approached the truck. Presumably, the deputy obtained evidence of Connor's intoxication, which was what he sought to have suppressed. However, it is important to note that none of these historical facts were ever in dispute. The sheriff's deputy was the only witness to testify at the suppression hearing, and the transcript does not indicate that Connor's attorney seriously disputed any of these facts.

16. The statute reads in relevant part: "A person commits OUI if that person: A. Operates a motor vehicle: (1) While under the influence of intoxicants; or (2) While having a blood-alcohol level of 0.08% or more." ME. REV. STAT. ANN. tit. 29-A, § 2411 (Supp. 2009-2010). Ironically, Connor was not younger than twenty-one at the time of the stop and could not be charged with underage drinking, which was the purpose of the investigation.

Connor then moved to have the evidence obtained from the stop suppressed;¹⁷ however, the trial judge denied this motion after finding that the officer had reasonable articulable suspicion¹⁸ of impaired driving to stop the vehicle. More specifically, the judge said, “[I think] under those circumstances¹⁹ [it] would be reasonable suspicion to stop every vehicle leaving that party to determine whether the person was underage and whether they had been drinking. I think it’s a close question, but I think in these circumstances there was an articulable position and I think it was reasonable.”²⁰ After the judge made this determination, he permitted Connor’s attorney to inquire about the findings.²¹ Connor’s attorney specifically tried to clarify the judge’s conclusion by asking, “[Is] the finding that it’s reasonable because it would have been reasonable to stop any vehicle leaving the party on those facts?”²² The judge answered, “I think under those circumstances of this particular case where it appears to have been coming right from the location that party, that it would have been, yes.”²³ Connor’s attorney made no further inquests. Because the motion was denied, Connor subsequently entered a conditional plea²⁴ and preserved his right to appeal the judge’s denial of his motion to suppress.²⁵

B. The Law Court Opinions

The opinion of the Law Court, delivered by Justice Alexander, concluded that the trial court did not err in finding that the sheriff’s deputy had reasonable articulable suspicion to stop the vehicle. The opinion spent equal time addressing the ambiguity of the “findings of fact” and the actual application of Fourth Amendment jurisprudence to those facts.²⁶ Justice Alexander started by reviewing the suppression hearing transcript for the findings of fact. In the majority’s view, the factual record was “ambiguous” because neither the trial judge, nor Connor’s attorney, ever clarified if the “circumstances of this particular case” referred only to a truck leaving a party where underage drinking was occurring, or if it also

17. The record is unclear as to what evidence Connor was trying to have suppressed. Presumably it would have included a blood-alcohol result or breathalyzer test and possibly any statements he may have made to the sheriff’s deputy.

18. The legality of traffic stops is based on the “reasonable articulable suspicion” standard. *State v. Porter*, 2008 ME 175, ¶ 11 960 A.2d 321, 323. The court has defined this standard as an officer’s suspicion that is “more than mere speculation or an unsubstantiated hunch.” *Id.*

19. “Those circumstances” include the fact the sheriff’s deputies were at the party to specifically investigate underage drinking, there seemed to be a party going on, and they had a “vehicle leaving the party.” Transcript of Record, *supra* note 8, at 33-34.

20. *Id.* at 34.

21. Although not specifically indicated by the transcript, this request was made pursuant to ME. R. CRIM. P. 41(A)(d).

22. Transcript of Record, *supra* note 8, at 34.

23. *Id.*

24. ME. R. CRIM. P. 11(a)(2).

25. *Connor*, 2009 ME 91, ¶ 6, 977 A.2d at 1005.

26. This Note will assume that had the findings of fact been as the majority interpreted them, the sheriff’s deputy would have had reasonable articulable suspicion to conduct the search. Even the dissent concedes this—“there was more than sufficient evidence . . . that would support the denial of [the] motion to suppress.” *Id.*, ¶ 13, 977 A.2d at 1006 (Clifford, J., dissenting).

included the fact that the truck backed into a ditch.²⁷

Thus, as the court wrote, when the findings are “ambiguous,” Rule 41(A)(d) of the *Maine Rules of Criminal Procedure*²⁸ “invites parties to seek clarification of the court’s findings on any issue by filing a motion for further findings and conclusions” because the “findings, stated orally at the conclusion of a contested hearing, may not always address with precision each issue that a party, with the clarity of hindsight, may deem important.”²⁹ Consequently, Justice Alexander found that Connor’s attorney did not adequately seek clarification or further findings of fact, despite the fact that his attorney asked several follow-up questions after the judge made his ruling.³⁰

The dissenters, on the other hand, did not see the ambiguity in the factual record that the majority illustrated. Although Justice Clifford agreed that “there was more than sufficient evidence presented by the State that would support the denial of Connor’s motion to suppress the evidence of his intoxication,” he nonetheless would have vacated the judgment because the “findings recited by the court . . . do not provide a sufficient basis to justify the stop.”³¹ To the dissenters, it appeared that Connor’s attorney had made a specific request for the court to clarify its findings, and the court “made clear that it was relying on the fact that the truck was driving away from a party where underage drinking was suspected.”³² Similarly, the court “made no mention of Connor’s operation of the vehicle, and did not indicate that it was placing any reliance on the operation of the vehicle as contributing to the justification for the stop.”³³ To Justice Clifford, the “findings of fact” unambiguously referenced only the truck leaving a party where underage drinking was suspected and not its operation. This alone, in the dissenter’s view, was insufficient to satisfy the reasonable articulable suspicion standard, and thus the evidence should have been suppressed.³⁴

27. *Id.*, ¶ 7, 977 A.2d at 1005. As noted *supra* note 5, this ambiguity is not over a historical fact, i.e., whether or not Connor’s truck actually backed into a ditch, but rather over the trial judge’s legal reasoning as to what constituted the reasonable articulable suspicion needed to justify the stop.

28. Rule 41(A)(d) provides:

If the motion [to suppress] is granted, the court shall enter an order limiting the admissibility of the evidence according to law. If the motion is granted or denied, the court shall make findings of fact and conclusions of law either on the record or in writing. If the court fails to make such findings and conclusions, a party may file a motion seeking compliance with the requirement. If the motion is granted and if the findings and conclusions are in writing, the clerk shall mail a date-stamped copy thereof to each counsel of record and note the mailing on the criminal docket. If the findings and conclusions are oral, the clerk shall mail a copy of the docket sheet containing the relevant docket entry and note the mailing on the criminal docket.

ME. R. CRIM. P. 41(A)(d).

29. *Connor*, 2009 ME 91, ¶ 8, 977 A.2d at 1005.

30. *Id.*, ¶ 7, 977 A.2d at 1005.

31. *Id.*, ¶ 13, 977 A.2d at 1006 (Clifford, J., dissenting).

32. *Id.*, ¶ 17, 977 A.2d 1003 at 1007.

33. *Id.*

34. Justice Clifford compares Connor’s stop to a situation where a person is operating a vehicle near a bar late at night: “[W]here a person is seen leaving a bar, or driving late at night around the time when the bars generally close, a person driving a vehicle from a party where underage drinking is suspected, by itself, does not amount to reasonable articulable suspicion that would justify an investigatory stop.” *Id.*, ¶ 19, 977 A.2d at 1008.

Unlike Justice Alexander's majority opinion, which split equal time between discussing the adequacy of the findings of fact and the application of the Fourth Amendment, the dissenting opinion is almost entirely spent on the findings of fact issue. In his discussion of the findings of fact, Justice Clifford emphasized the effort that Connor's attorney engaged in to clarify the record: "Connor stated that he was making the request so that '[it] may be clear for the record.'"³⁵ To the dissenters, this request to make the record clear "fulfilled [Connor's] obligation pursuant to Rule 41(A)(d) to request the court to expand on inadequate findings in order for the record to be meaningful for appellate review."³⁶ Consequently, "Connor's attorney made a good faith request for further findings to determine on what facts the court was relying when it considered whether the stop was justified."³⁷

C. Where the Law Court Went Wrong: Findings of Fact vs. Conclusions of Law

As is evidenced from Part II(B) discussed above, both the majority and dissenting opinions spent a significant amount of time addressing the adequacy of the trial judge's findings of fact and whether Connor's attorney had fulfilled his Rule 41(A)(d) obligations. However, in all reality, the *Connor* case did not warrant such a discussion. Why? Because whether the officers had "reasonable articulable suspicion" is a question of *law*³⁸ and should be reviewed *de novo* by the Law Court. Since the historical facts of the case were undisputed, the only conclusion left for the trial judge to make would be a legal conclusion.

In this case, the trial judge had to weigh whether the operation of the truck, the backing into the ditch, and the suspected drinking constituted reasonable articulable suspicion. Although the judge may have been ambiguous about which of these "circumstances" he used to reach the reasonable articulable suspicion conclusion, he was still applying the law to undisputed facts. In essence, it didn't really matter which "circumstances" or factual findings the judge used to reach the reasonable articulable suspicion standard, because, on appeal, the Law Court should make its own determination about whether or not the evidence presented at trial constituted reasonable articulable suspicion.

As both the majority and dissenting opinions make clear, there was more than adequate evidence in the record to support a legal conclusion of reasonable articulable suspicion. Justice Alexander writes:

35. *Connor*, 2009 ME 91, ¶ 15, 977 A.2d at 1006.

36. *Id.*, ¶ 16, 977 A.2d at 1007.

37. *Id.*, ¶ 17, 977 A.2d at 1007.

38. In *Ornelas v. United States*, 517 U.S. 690 (1996), the United States Supreme Court affirmatively set forth that the reasonable articulable suspicion standard requires *de novo* review. The Court wrote:

We think independent appellate review of these ultimate determinations of reasonable suspicion and probable cause is consistent with the position we have taken in past cases. We have never, when reviewing a probable-cause or reasonable-suspicion determination ourselves, expressly deferred to the trial court's determination. . . . This, if a matter-of-course, would be unacceptable. In addition, the legal rules for probable cause and reasonable suspicion acquire content only through application. Independent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles. Finally, *de novo* review tends to unify precedent.

Id. at 697-98 (citations omitted).

Here, the officer was investigating in the vicinity of a large, loud party where drinking of alcoholic beverages was likely occurring. He saw a truck back down a lane and then, on a straight section of the lane, veer off the lane and back into a ditch. He then saw the truck spin its wheels to get out of the ditch and stop in the middle of the lane.³⁹

To the majority, all of these undisputed facts easily supported a belief of reasonable articulable suspicion that the operator might be impaired or ill, or that there might be a problem with the vehicle.⁴⁰ Similarly, the dissent writes, “I do not disagree that there was more than sufficient evidence presented by the state that would support [the motion].”⁴¹ Thus, if the court had strictly undertaken a *de novo* review of the reasonable articulable suspicion, the opinion would have been unanimous, as all agreed there was enough *factual* evidence presented to support a *legal* finding of reasonable articulable suspicion. The court, however, failed to distinguish between law and fact⁴² and ultimately wasted time discussing an irrelevant legal ambiguity in the trial court’s findings, leading to a dissent on an irrelevant issue.

III. THE CONNOR HYPOTHESIS

Although there was no factual ambiguity in the record in *Connor*, the Law Court spent significant time discussing one. This presents an interesting question—what should the court do when there *really is* an ambiguity in the findings of fact?—a situation this Note will refer to as the “Hypo.” More specifically, the Hypo will include all of the same facts as the *Connor* case, except it will assume that Connor himself took the stand to say that he never backed into a ditch. This would create a situation where there actually would be a *factual* dispute. Because of this, the trial judge’s findings of fact would have been important. In this Hypo, it is easy to see how the ambiguity in the record—that is, which witness the trial judge credited regarding the backing into the ditch—could have a significant impact on the court’s application of the Fourth Amendment.⁴³ Assuming this Hypo did reach the court, the real question becomes how the court should treat the ambiguity in the findings of fact. In this situation, the analysis the court provided in *Connor* actually becomes relevant. This part of the Note will

39. *Connor*, 2009 ME 91, ¶ 11, 977 A.2d at 1006.

40. *Id.*

41. *Id.*, ¶ 13, 977 A.2d at 1006 (Clifford, J., dissenting).

42. Just six years ago in *State v. Sylvain*, the Law Court recognized this important distinction and illustrated the proper method of appellate review. First, the court wrote that the motion judge decides historical facts, which are not disturbed on appeal unless they are clearly erroneous. 2003 ME 5, ¶ 8, 814 A.2d 984, 987. Second, the motion judge must use these historical facts in reaching legal conclusions. *Id.*, ¶ 9, 814 A.2d at 987. The Law Court stated that a “challenge to the application of constitutional protections to historical facts is a matter of law that we review *de novo*. We are in the same position as the motion court to determine whether an application of the governing constitutional principles to the historical facts warrants a particular legal conclusion.” *Id.* In *Connor*, the court obviously failed to make this important distinction.

43. For example, if Connor’s truck did not back into the ditch, it would be a much closer call on the reasonableness of the deputy’s suspicion. The dissenters would probably find this situation analogous to a “person operat[ing] a vehicle outside of or near a bar, or late at night around the time that bars generally close.” *Connor*, 2009 ME 91, ¶ 18, 977 A.2d at 1007. Thus, if the trial judge believed Connor’s testimony, the validity of the stop would have been a much closer question.

examine how the court has dealt with ambiguities in the past, and apply the reasoning from the *Connor* case to the Hypo to see how the court would likely address an ambiguity today.

In the past, the Law Court has reviewed a motion to suppress with ambiguous findings of fact in two drastically different ways. The first approach, which is devastating to the appellant, is to simply dismiss the appeal for not providing an accurate record. As the court noted, when utilizing this “harsh” approach:

[The appellant] must meet its obligation as an appellant to provide us with a sufficient record that includes adequate findings of fact, or at least must take all procedural steps within its power to do so . . . [B]ecause the [appellant] has failed to provide such record here, its appeal must fail.⁴⁴

The obvious effect of this approach is to punish the appellant for not requesting additional findings of fact, even though the trial judge also had an obligation to provide them.⁴⁵

The second approach that the Law Court has utilized more recently is the “inferential” standard—that is, the court is willing to infer that the trial judge found all facts in favor of the winning party. The court has articulated this standard as follows:

Absent a specific finding or request therefore, the trial court is presumed to have made all factual findings necessary to support its decision. Since a finding that the stop was based upon “reasonable and articulable suspicion” was necessary to the court’s decision not to suppress the evidence, we must assume that it made such a finding.⁴⁶

Because the Law Court spent so much time addressing the findings of fact issue in *Connor*, even though it was irrelevant, one can make an educated guess as to how the court would handle the Hypo. As he indicated in *Connor*, Justice Alexander would have used an “inferential” standard of review. This standard allows the Law Court to respect the trial court’s judgment “if those inferred findings are supportable by evidence in the record.”⁴⁷ In the Hypo, then, Justice Alexander would still find in favor of the State because there was *some* evidence in the record of the truck backing into the ditch (e.g., the officer’s testimony). As part of this standard, the majority essentially would interpret an ambiguity in the record in favor of the winning party in the trial court.

The dissenters seem to take a different approach. Justice Clifford argued that the trial court had “made no mention of Connor’s operation of the vehicle, and did not indicate that it was placing any reliance on the operation of the vehicle as contributing to the justification for the stop. The court was not required to accept all of the evidence presented at the suppression hearing.”⁴⁸ This would seem to indicate that if indeed the record were ambiguous as to a factual point, the

44. *State v. Kneeland*, 552 A.2d 4, 6 (Me. 1988).

45. Rule 41(A)(d) mandates that the judge provide findings of fact. If either party is not satisfied with the judge’s findings, it is permitted to request further findings. ME. R. CRIM. P. 41(A)(d).

46. *State v. D’Angelo*, 605 A.2d 68, 70 (Me. 1992). *See also* *State v. Powell*, 591 A.2d 1306 (Me. 1991).

47. *Connor*, 2009 ME 91, ¶ 9, 977 A.2d at 1005.

48. *Id.*, ¶ 17, 977 A.2d at 1007 (Clifford, J., dissenting).

dissenters would not infer anything. Rather, they would solely rely on facts explicitly found by the court. If this approach were applied to the Hypo, the end result would likely be much different. More specifically, the ambiguity in the Hypo record—that is if the truck actually went into the ditch—would be resolved in favor of Connor simply because it was not addressed at all by the trial court. This approach seems fairly radical and a departure from the court’s jurisprudence.

Lastly, if the Law Court had applied the “harsh” approach mentioned above—that is, to simply dismiss appeals with ambiguous records—the result would be obvious. Since Connor would be the appealing party, it would be his responsibility to request adequate findings of fact pursuant to Rule 41(A)(d) and provide them to the court for review. Since the record would be inadequate, the court would uphold the trial judge’s determination without ever reaching the merits. Again, this approach seems harsh as it places an extreme burden on the appealing party to make sure the record is free from factual ambiguities.

IV. THE “INFERENTIAL” STANDARD AND ITS EFFECT ON TRIAL JUDGES, THE LAW COURT, AND DEFENDANTS

Applying these three approaches to the Hypo illustrates the radically different ways the Law Court could treat a case with an actual ambiguous factual record. As noted, the court has used the “harsh” and “inferential” approaches before, but has never used the approach illustrated by the dissent.⁴⁹ Surely, all of the justices would agree that they want to review motions to suppress with a deferential standard—that is, they only want to overturn a trial court’s factual determinations if they are clearly erroneous.⁵⁰ This has sound policy implications. Trial judges are best able to judge the weight and credibility of witness testimony, examine physical evidence, and review exhibits presented by attorneys. However, as the *Connor* case shows, the two opinions take drastically different positions on how to review a motion to suppress when the factual record is less than perfect. In the dissenting opinion, Justice Clifford believes that the “inferential” standard used by the majority will have negative effects on trial judges, attorneys, and defendants.⁵¹ This part of the Note will examine if the “inferential” standard the majority opinion articulates actually does affect any constituents of the legal system as Justice Clifford feared.

A. Trial Judges

It is debatable how an “inferential” standard of review affects trial judges. At

49. After a diligent search, the Author could not find any examples where the court has used this approach in a suppression hearing context.

50. The majority maintained that the Law Court “will not substitute [its] judgment as to the weight or credibility of the evidence for that of the fact-finder if there is evidence in the record to rationally support the trial court’s result. The trial court’s findings in this case must be judged by this deferential standard of review.” *Connor*, 2009 ME 91, ¶ 9, 977 A.2d at 1005. On the other hand, the dissent argued that the Law Court’s “review of the [trial] court’s ultimate determination . . . should . . . be based solely on the facts found by the court, if supported by competent evidence in the record.” *Id.*, ¶ 17, 977 A.2d at 1007 (Clifford, J., dissenting).

51. Justice Clifford believes requests for further findings will increase the burden on attorneys and courts, and will result in higher attorneys fees. *Id.*, n.5, 977 A.2d at 1007 (Clifford, J., dissenting).

first glance, this standard appears to lighten the workload for trial judges. That is, if the Law Court is willing to infer all findings of fact in favor of the trial court's opinion, the trial judge will not have to expound or go through pains to make the record clear. However, the dissent seems to think the "inferential" standard will only make this duty more onerous. As Justice Clifford noted:

It is the nature of suppression motion practice that facts are often found . . . from the bench, and that requests for further findings . . . are also made orally and decided from the bench. To require parties to always file a written motion for further findings following the hearing . . . will impose an unnecessary burden . . . on the courts.⁵²

Former Justice Hornby (now, ironically, a federal trial judge) also voiced this concern: "I believe it is unrealistic to expect . . . District Court judges, confronting the volume of cases they do without adequate secretarial assistance, to provide the detail we might prefer [in the findings of fact]."⁵³ In essence, the only way an appellant could avoid the "inferential" standard would be to require trial judges to be painstakingly unambiguous in their findings. This could result in longer hearings, more written motions, and essentially change the informal "nature of suppression motion practice."⁵⁴ On the other hand, if the appealing party does not request further findings of fact, a trial judge's workload will be significantly reduced.

B. The Law Court

To the Law Court, the inferential standard mentioned in this case is nothing new. It typically uses this standard in reviewing trial court verdicts. Because it is often impossible to determine what facts and witnesses juries credited during their deliberations, the court will generally infer that they found all facts necessary to convict if those inferred findings are supported by the evidence. In essence, this makes the court's job easier because the Law Court can defer to trial courts and does not have to make factual determinations. However, the argument for using an inferential standard is seriously weakened in a suppression motion context, as trial judges are not only completely able but are also compelled to enter findings of fact adequate for review.⁵⁵ Furthermore, even though motions to suppress are generally fact intensive, the applicable Fourth Amendment law still needs to be applied correctly to those facts.⁵⁶ Hence, a clear record would actually make the application of the law easier for the court.

C. Defendants

Lastly, the defendants themselves are affected by this "inferential" standard. More motions for further findings will mean more time for scheduling, deciding,

52. *Id.*

53. *Kneeland*, 552 A.2d at 8 (Hornby, J., dissenting).

54. *Connor*, 2009 ME 91, n. 5, 977 A.2d at 1007 (Clifford, J., dissenting).

55. ME. R. CRIM. P. 41(A)(d).

56. This is illustrated by the Hypo. If it were unclear whether Connor backed into the ditch, the court would have had a difficult time applying the Fourth Amendment to the case.

and writing opinions—all of which will result in longer delays for the defendant and higher attorney’s fees. Most importantly, if a suppression motion is wrongly decided by the trial court, and the Law Court does not insist on a clear record, then there exists a real possibility that the error in the trial court will not be corrected on appeal. Without the ability to correct trial court mistakes, the Law Court essentially loses all value to defendants.

V. HOW THE COURT SHOULD ADDRESS A REAL AMBIGUITY IN THE FINDINGS OF FACT

With these competing considerations, it is hard to imagine a way to review an ambiguous record that would not have negative consequences for some and positive outcomes for others. Also, any change in criminal practice—where liberty is at stake—should carefully balance the due process rights of the accused with the need for an effective and expeditious judicial system. While keeping these important values in the background, this part of the Note will propose a change in how the Law Court should review ambiguous factual records from suppression hearings and articulate the reasons for that change. More specifically, the Law Court should abandon the “inferential” guessing game⁵⁷ it currently plays and replace it with a structure under which appeals with inadequate records are simply not entertained, except in cases where the appealing party made a good-faith effort to provide adequate findings of fact. In the case where the appealing party makes the effort to clarify and expand an ambiguous record, yet the trial judge’s findings of fact are still incomplete or ambiguous, the Law Court should remand the case for further findings of fact.

A. Step One: Turn Away Appeals with Inadequate Records

In almost all contexts of appellate review, the appealing party bears the burden of providing a clear record for the appellate court to review. The Law Court has made it clear that this general rule applies to criminal and civil cases alike:

An appellant has the burden of supplying this Court with a record adequate to permit a fair consideration of the issues presented for review. When the record made available to the Law Court to support an appeal is inadequate, such appeal must fail, and this applies in criminal appeals as it does on the civil side.⁵⁸

For reasons that are not entirely clear, the court has relaxed this rule over the years and has “inferred” findings of fact when the record has been unclear, as discussed above.⁵⁹ However, re-establishing this bright line (albeit harsh) rule will ultimately benefit the Law Court in conducting its review of suppression motions.

57. This is referred to as a “game” because the Law Court does not know how the trial court decided the issue. Instead, it just assumes or guesses that it found in favor of the winning party.

58. *State v. Thwing*, 487 A.2d 260, 262 (Me. 1985). *See also* *State v. Kerr*, 455 A.2d 425, 425 (Me. 1982); *State v. MacArthur*, 417 A.2d 976, 979 (Me. 1980); *State v. Howard*, 405 A.2d 206, 208 (Me. 1979).

59. In *Kneeland*, the Law Court rejected an appeal from a suppression motion because the findings of fact presented to it were insufficient. It did not “infer” anything from the trial judge’s ruling. *Kneeland*, 552 A.2d at 6.

At first glance, this strict structure appears to impose additional burdens on attorneys, and consequently, on trial judges. An attorney who is faced with the threat of having an appeal denied for an inadequate record will be sure to clarify the record to the best of her ability. This may result in additional questions and the occasional written motion, which in turn, produces work for the trial judge. However, as Justice Clifford pointed out in his dissent, these are generally informal hearings where most of the questions and answers are oral. It is hard to imagine how a few clarifying questions could impose a truly arduous burden on either the attorney or the trial judge. Furthermore, as zealous advocates for a defendant with his or her liberty on the line, an attorney should be encouraged to ask questions and clarify the record—after all, part of what the attorney’s job. Lastly, because attorneys practice in a field where a definitive answer is rarely certain, it seems that an attorney would appreciate a bright-line standard over an unclear one.

Of course, the Law Court is the real beneficiary of this change. The court is able to keep its deferential standard of review (clear error), can easily dispose of appeals without adequate records (instead of trying to “infer” what the trial judge found), and will ultimately receive more thorough findings of fact from the trial courts to review. This will also result in a more accurate application of the law to the specific facts of each case, which is one of the primary functions of an appellate court.

*B. Provide a “Good-Faith” Exception and Allow for
Remand if the Record Is Inadequate or Ambiguous*

This hard-line approach would seem to leave some appellants out in the cold. For example, if this approach had been used in the Hypo, then Connor’s appeal would not have been heard at all. However, the Law Court should allow for a “good-faith” exception—that is, when the appealing attorney made an honest and good-faith attempt to clarify an ambiguity in the record or expound the trial court’s recited findings, the Law Court should remand the case to the trial court for clearer and fuller findings of fact. Once the clarified findings are completed, the Law Court could hear the case with a clear record—eliminating the need for the “inferential” guessing game that is currently utilized.

This approach is hardly radical—it has been utilized by the Law Court in other contexts⁶⁰ and by courts in other states in the suppression context.⁶¹ The use of

60. See, e.g., *Chapel Rd. Assocs. v. Town of Wells*, 2001 ME 178, ¶ 1, 787 A.2d 137, 138 (concluding “that the Board’s findings of fact are insufficient to permit appellate review, we vacate the Superior Court’s judgment with instructions to remand the matter to the Board for findings of fact.”).

61. See, e.g., *Arizona v. Zamora*, 202 P.3d 528 (Ariz. Ct. App. 2009) (remanding because the record was insufficient for the appellate court to determine whether defendant’s statement should be suppressed); *Johnson v. Wyoming*, 214 P.3d 983 (Wyo. 2009) (holding that the record on appeal was insufficient to allow for appellate review, and thus remand was required for factual findings and conclusions of law in a suppression hearing); *Oregon v. Lantzsich*, 214 P.3d 22, (Or. Ct. App. 2009) (holding trial court’s failure to make finding of fact regarding whether defendant subjectively believed that he had been seized required remand); *Skjervem v. Alaska*, 215 P.3d 1101 (Alaska 2009) (remanding a case to the trial court for further findings of fact on a suppression hearing); *Tennessee v. Gentry*, No. 02C01-9708-CC-00335, 1998 Tenn. Crim. App. 1998 WL 351228, at *2 (July 2, 1998) (holding that the trial court “failed to perform its affirmative duty and state the essential findings on the record,” and as a

remand for further findings of fact by an appellate court serves an important function: by remanding cases with incomplete factual records, the Law Court will ensure that it has an adequate record to review if the case subsequently returns for review and can apply the appropriate law to an accurate reading of the facts. However, by limiting the remand option to the rare cases where the appealing party made a good-faith effort to provide an accurate and unambiguous record, the Law Court will ensure that the amount of extra work for trial judges and attorneys is limited. Thus, it seems that remanding only in these limited circumstances would not have much strain on any of the competing constituencies mentioned above.

Had this method been used in the Hypo, it is likely that the case would have been remanded for further (and clearer) findings of fact.⁶² Since the findings would be viewed as ambiguous, the case should have been turned down unless Connor could show he made a good-faith effort at clarifying the record. As the dissent points out, Connor's attorney did make such an effort, so under this proposed change, the Hypo would have been remanded to the trial court to answer a single question—if Connor actually backed into the ditch or not. This would result in a better application of the law by the Law Court, and the extra work required of the trial court and attorneys would have been minimal. Meanwhile, the defendant would have had his case more accurately reviewed for legal error. This ultimately benefits the Law Court and the defendants, while not drastically harming the trial court.

VI. CONCLUSION

This proposed change is not the only way the Law Court could deal with this issue. The court could choose to amend Rule 41(A)(d) to further mandate unambiguous findings of fact.⁶³ However, given that the rule already makes findings of fact mandatory⁶⁴ for the trial judge, it is unlikely that such a change would have any real effect. The court could also consider remanding any case in which the findings of fact are ambiguous—however, this would likely result in the remanding of many cases, and consequently, an increased workload for busy trial judges. On the other hand, the court could use the “inferential” standard mentioned by the majority in *Connor*. However, as the Hypo illustrates, this could cause the court to infer something that was never actually found by the trial judge. Eventually, if this standard is used, the court will get it wrong and infer something incorrectly, resulting in the punishment of an innocent person. Thus, it seems the change that this Note proposes is an effective way to better serve the Law Court, criminal defendants, and trial judges. The bright-line nature of the rule will make it easy for attorneys and trial judges to follow, and make sure that they live up to their Rule 41(A)(d) obligations to request further findings of fact. More accurate findings of fact will result in more meaningful appellate review, which benefits

result, on remand, the trial judge would be required to “state on the record the factual findings that support his legal conclusions.”).

62. This assumes that Connor's attorney in the Hypo had requested a clarification on the ditch issue, yet the trial judge still did not provide a clear answer.

63. ME. REV. STAT. ANN. tit. 4, § 9 (2003).

64. ME. R. CRIM. P. 41(A)(d) advisory committee note to 1986 Amendment.

both the Law Court and the accused. Although in *Connor* the court only needed to review an ambiguous legal conclusion, this suggestion may improve their review should the court ever actually review a motion to suppress with ambiguous findings of fact.